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In The

Supreme Court of the United States

October Term, 1980

F. W. WOOLWORTH CO.,

Appellant,

vs.

TAXATION AND REVENUE DEPARTMENT OF THE STATE OF NEW MEXICO,

Appellee.

On Appeal from the Supreme Court of New Mexico

BRIEF OF AMICUS CURIAE MULTISTATE TAX COMMISSION AND PARTICIPATING STATES

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Whether the Uniform Division of Income for Tax Purposes Act (UDITPA) contravenes either the due process clause (Amend. XIV, § 1) or the commerce clause (Art. I, § 8 cl. 3) of the Constitution of the United States to the extent it requires the inclusion of income from stock investments in apportionable income when these investments are acquired and managed by the taxpayer in connection with its multistate trade or business operations.

2. Whether the apportionment provisions of the Uniform Division of Income for Tax Purposes Act (UDITPA), without modification, contravenes either the due process or commerce clause of the United States Constitution in requiring the apportionment of all business income under the UDITPA three-factor (tangible property, payroll and sales) apportionment formula when business income includes income from investments in stock and when the taxpayer has offered no proof that the formula attributes any net income to the taxing state which is not reasonably related to its instate activities and properties as required by UDITPA § 18[1].

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[1]N. M. Stat. Ann. 1981 (hereinafter N. M. S. A.) § 7-4-19; 7A Uniform Laws Annotated 106 (1978).

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INTRODUCTORY STATEMENT

This brief is submitted by the Multistate Tax Commission (hereinafter called the Commission) in support of the Appellee. The parties to this proceeding have consented to the filing of this brief.[2]

STATEMENT OF INTEREST

The interest of the Commission and the states participating in this cause are identical to their interest as set forth in their *amicus* brief in *ASARCO, Inc. v. Idaho State Tax Comm'n,* No. 80-2015, which will be considered in tandem with this case. Therefore, to repeat that statement here would be unduly repetitious. As in *ASARCO,* our interest in this case is that the apportionment provisions of UDITPA, and comparable state income tax attribution provisions, be upheld as constitutional since they apply the unitary business principle in a rational and reasonable manner. Neither the due process clause nor the commerce clause prescribes additional standards for the inclusion of income from stock investments or other intangibles in apportionable income than for the inclusion of other income of the taxpayer. In our judgment, all of the income from intangibles acquired and held in connection with a taxpayer's unitary business can be apportioned, for state income tax purposes, among the various taxing jurisdictions where the taxpayer conducts its unitary business, as required by a reasonable interpretation and application of UDITPA. This brief is filed in support of this position.

COUNTER STATEMENT OF THE CASE

The Commission accepts Woolworth's Statement of The Case except that it *disagrees* with Woolworth's state-

[2]Originals of the consent letters have been filed with the Clerk of the Court.

ments pertaining to its relationship with its four subsidiaries (from which it received the dividends in question) and with the statement's omission of important facts. These facts, concerning Woolworth's relationship with its subsidiaries, are set forth in the opinion below (J. S. at 8a-9a). Based on these facts and its examination of the entire record, the New Mexico Supreme Court concluded that there were sufficient unitary relationships between Woolworth and those subsidiaries to establish that Woolworth's stock investments in these subsidiaries were related to Woolworth's unitary business (J. S. at 19a). This conclusion is amply supported by the transcript of the proceedings below.[3]

As to these relationships, it is important that Woolworth does not claim that it did not conduct all of its own

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[3]Woolworth's foreign subsidiaries, under the Woolworth name (J. A. at 22a), conducted the same type of retail operations as Woolworth (J. A. at 21a). Woolworth's overall financing and planning included and was integrated with that of its foreign subsidiaries (J. A. at 27a-28a). There was a substantial exchange of business information between Woolworth and its foreign subsidiary corporations through a teletype communications system and travel of executive personnel (J. A. at 34a-36a). This was particularly true with regard to major decisions (J. A. at 37a). Any substantial borrowing of the foreign subsidiaries or other major decisions or transactions required approval of Woolworth (J. S. at 49a). To what extent there was a flow of goods between Woolworth and its domestic subsidiaries is not known (J. A. at 44a-45a). However, there was a flow back and forth of financial resources (J. A. at 45a). While the record is not clear as to the actual degree of control Woolworth's board of directors exercised over its foreign subsidiary corporations, it did oversee these operations (J. A. at 49a). Responsibilities were given to them by Woolworth only commensurate with the development of their abilities to act independent of Woolworth (J. A. at 45a). Also, there were interlocking directors and executive personnel between that of Woolworth and its foreign subsidiaries (J. A. at 29a-30a). The managing directors of the foreign subsidiaries were selected by Woolworth (J. A. at 32a). The dividend policies of the subsidiary and affiliated corporations in question were determined by Woolworth (J. A. at 33a).

business operations as a single unitary business or that the dividends in question did not result from stock investments which were rationally related to this business which it conducted in part in New Mexico for the year in question.[4] Nothing in the record indicates otherwise or establishes that the UDITPA apportionment formula, as applied to Woolworth's total income from its unitary business, assigns any income to New Mexico not rationally related to Woolworth's New Mexico activities for the year in question.[5] Further, Woolworth has never contended that it should be permitted to file its return in question on the "combined reporting" method. Neither has it shown what would be the results of a "combined report." Rather, Woolworth argues as an abstract proposition that a "combined report," which includes foreign subsidiaries, is unconstitutional (Appellant's Br. at 37).

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SUMMARY OF ARGUMENT

Beginning with the early *ad valorem* property tax case of *Adams Express Co. v. Ohio State Auditor*, 165

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[4]For a more complete statement of these ties for prior years, see *F. W. Woolworth Co. v. Director of Taxation*, 45 N. J. 466, 213 A. 2d 1 (1965).

[5]For the year in question in New Mexico, Woolworth had tangible property of $8,750,664, sales of $13,253,425 and payroll of $1,996,950 (J. A. at 57a). The net income attributable to New Mexico after inclusion of the disputed items in apportionable income was $401,518 (J. A. at 69a). This net income attributable to New Mexico represents 4.6% return on Woolworth's tangible property and 3% return on its sales in New Mexico. If the items in question are excluded, the New Mexico taxable net income is reduced to $84,622 which represents only .97 of 1% return on tangible property and .64 of 1% return on sales in New Mexico. A comparison of the result when the income in question is included to the result when the income in question is excluded, Appellant's Br. at 7, does not establish that the inclusion of the income in question in apportionable income results in taxation by New Mexico of extra-territorial values or income. A 4.6% return on tangible property and a 3% return on sales is not *per se* unreasonable.

U. S. 194, *rehearing,* 166 U. S. 185 (1897) through *Exxon Corp. v. Wisconsin Dep't of Revenue,* 447 U. S. 207 (1980), this Court has uniformly sustained reasonably apportioned state taxes imposed on property, corporate franchises or net income. These holdings stand for the principle that states are free to use the unitary business principle in apportioning income or values. This Court has never limited the apportionable tax base to instate values, properties or income. *Exxon, supra; Mobil Oil Corp. v. Commissioner of Taxes,* 445 U. S. 425 (1980); *U. S. Steel Corp. v. Multistate Tax Comm'n,* 434 U. S. 452, 473 nn. 25 & 26 (1978); *Butler Bros. v. McColgan,* 315 U. S. 501 (1942); *Bass, Ratcliff & Gretton, Ltd. v. State Tax Comm'n,* 266 U. S. 271, 282 (1924); *Underwood Typewriter Co. v. Chamberlain,* 245 U. S. 113 (1920). It has recognized that "net income taxes", unlike gross receipts taxes, are not imposed on specific transactions from which net income may be derived. *N. Y. ex rel. Cohn v. Graves,* 300 U. S. 308, 312 (1936); *N. Y. Peck & Co. v. Lowe,* 247 U. S. 165 (1918). Unitary apportionment is valid even though applied to income from foreign activities of a foreign corporation. *Bass, Ratcliff & Gretton, Ltd., supra.*

The Court has recognized that the possession of large blocks of intangible properties gives value to a business, in conducting instate activities, which can be considered in imposing a state tax on instate activities. *Ford Motor Co. v. Beauchamp,* 308 U. S. 331, 336 (1939) (citing *Bass, supra; National Leather Co. v. Massachusetts,* 227 U. S. 413 (1928)); *National Leather Co. v. Massachusetts,* 277 U. S. 413 (1928); *Flint v. Stone Tracy Co.,* 220 U. S. 107 at 166 (1911). It has recognized that intangibles may be taxed where they have a "business situs". *First Bank Stock Corp. v. Minnesota,* 301 U. S. 234 (1937); *Wheeling*

Steel Corp. v. Fox, 298 U.S. 193 (1936). The Court has further held that a state may tax intangibles if it confers any benefits in regard to the ownership or use of the intangibles. *Curry v. McCanless*, 307 U.S. 357 (1939); *Liverpool Ins. Co. v. Orleans Assessors*, 221 U.S. 346 (1911). It has applied no different rule as to stocks. *First Bank Stock Corp. v. Minnesota, supra; Adams Express Co. v. Ohio State Auditor, supra.*

The Court has consistently placed the burden on the *taxpayer* to *prove* (1) that a state taxing statute is unconstitutional, *Mobil*, 445 U.S. at 442; *Norton Co. v. Department of Revenue*, 340 U.S. 534, 537 (1951), and (2) that the tax is imposed on transactions which are disassociated from instate activities, *Norton Co., supra.* It has consistently refused to engage in abstract hypothetical reasoning for these purposes, *Moorman Mfg. Co. v. Bair*, 437 U.S. 267, 276 (1978). It has also held that it is presumed that all of a corporation's properties contribute to the operations of its entire business, and that intangibles which are associated with a unitary business are properly attributable to where that business is done. *Adams Express Co., supra.*

The Court has repeatedly recognized that apportionment is only a method used to roughly approximate income attributable to a taxing jurisdiction and that it does not purport to identify or tax any specific income derived from identifiable sources. *Exxon, supra; Mobil, supra; Moorman*, at 278-80 (1978). It has invalidated an apportionment formula only when the taxpayer has established by clear and cogent evidence that the formula resulted in the taxation of extra-territorial income or values. *Moorman, supra; Norfolk & Western Ry. Co. v. North Carolina*, 297 U.S. 682 (1968); *Hans Rees' Sons, Inc. v. North Carolina*, 283 U.S. 123 (1931).

The Court has held that any prohibited risk of multiple taxation under the commerce clause is satisfied by reasonable apportionment rules. *Mobil, supra; Japan Line Ltd. v. Los Angeles,* 441 U.S. 434 (1979); *Northwestern States Portland Cement Co. v. Minnesota,* 358 U.S. 450, 448-49 (1959).

In sum, the Court has concluded that a state tax conforms to the due process and commerce clauses if the tax (1) is fairly apportioned and non-discriminatory; (2) is applied to an activity with a nexus in the state; (3) is designed to reasonably compensate the state for services provided; (4) is rationally related to instate activities; and (5) furthermore, there is a rational relation in regard to the property, value or income of a multijurisdictional unitary business when the entire property, value or income of such a business is apportioned unless the taxpayer can show the apportionment result reaches extra-territorial values, property or income. *Mobil, supra; Exxon, supra; Japan Line, supra; Moorman, supra.* A state tax that reaches intangible values or income has triggered no additional constitutional restrictions.

The UDITPA apportionment provisions, on their face and as applied by the court below, conform to the foregoing constitutional principles. These provisions only require the apportionment of income which is rationally related to the taxpayer's unitary business which is conducted in part in the taxing state by the well recognized three-factor apportionment formula. (*Butler Bros., supra,* upheld this formula as applied to the total unitary business income of the taxpayer). Furthermore, since UDITPA provides for apportionment relief[6] if the income

[6] I. C. § 63-3027 (r); UDITPA § 18. See the Commission's *amicus* brief in *ASARCO* at 7 for a discussion of this apportionment relief provision.

apportioned to a state is not reasonably related to the taxpayer's instate activities, UDITPA conforms to the due process limitations of *Hans Rees' Sons, Inc., supra.* The court below applied these provisions consistent with the foregoing statutory requirements.

Without directly challenging the above controlling constitutional principles, Woolworth here argues that *Mobil* imposes additional due process limitations on state taxing powers when income from stock investments are included in apportionable income. In addition, Woolworth argues that *Japan Line, supra,* imposes additional commerce clause limitations if income from stock investments in foreign corporations is included in apportionable income. However, *Mobil* upheld the apportionment of dividends in accordance with the foregoing general constitutional principles and further held that *Japan Line,* was irrelevant to state net income tax apportionment cases. 445 U. S. at 448.

Woolworth's argument that *Mobil* invalidates the lower court's decision, apart from its misinterpretation of *Mobil* and *Japan Line,* is premised on two basic misconceptions. First, it confuses the dividend income of a payee corporation with the payor corporation's net taxable income for the current tax year. It ignores the fact that the taxpayer whose earnings are being apportioned is the payee who holds the stock investments in connection with its own unitary business. Second, it assumes that the attribution of income from stock investments (and presumably other intangibles) to the unitary business activities of the payee corporation by the apportionment factors of UDITPA will inevitably produce an arbitrary result (Appellant's Br. at 11, 38, 41). It has otherwise not sought to show why due process is violated by the decision below. Therefore, Woolworth has not sustained its

burden of proving that the decision below contravenes constitutional limitations.

ARGUMENT

I. The UDITPA Apportionment Formula Conforms to Due Process Limitions and Is Not "Inherently Arbitrary" as a Matter of Law When it Requires the Apportionment of All the Business Income of a Taxpayer, Including Income from Intangibles: It Is Reasonable to Apportion All Business Income to Where the Business is Done as Reflected by the Location of the Tangible property, Payroll and Sales of the Business.

As noted by this Court in *Exxon:*

> The Due Process Clause of the Fourteenth Amendment imposes two requirements for such state taxation: a "minimal connection" or "nexus" between the interstate activities and the taxing State, and "a rational relationship between the income attributed to the State and the intrastate values of the enterprise." *Mobil Oil Corp. v. Commissioner of Taxes, supra,* at 436, 437.

Since there is no question of taxable "nexus" or disproportionate taxation here, the only due process issue is whether the UDITPA apportionment provisions, as applied, attribute net income to New Mexico which is rationally related to Woolworth's instate business activities. A net income tax is rationally related to a taxpayer's instate business activities, if the entire net income of a unitary business, which is conducted in more than one taxing jurisdiction, is apportioned among the taxing jurisdictions in which the business is conducted, unless the taxpayer can establish by clear and cogent evidence that the apportionment formula, as applied, taxes extra-territorial values or income. *Underwood Typewriter Co.,* 254 U.S. at 121; *Bass, Ratcliff & Gretton, Ltd.,* 266 U.S. at 283; *Butler Bros.,* 315 U.S. at 509; *Northwestern States Portland Cement Co.,* 358 U.S. at 464-65;

Moorman Mfg. Co., 437 U. S. at 273; *Mobil Oil Corp.*, 445 U. S. at 436-37; *Exxon Corp.*, 447 U. S. at 207; *Hans Rees' Sons, Inc.*, 283 U. S. at 123. The fact that apportionable income includes income from intangibles, does not result, *per se*, in the taxation of values or income which is not rationally related to the instate business of the taxpayer since intangibles and income from intangibles may be rationally related to the taxpayer's entire unitary business. *Adams Express Co., supra; Ford Motor Co., supra; Flint, supra; Butler Bros., supra; Mobil, supra; Northwestern Portland Cement Co., supra; National Leather Co., supra*; *Great Lakes Pipeline Co.*, 272 Minn. 403, 138 N. W. 2d 612 (1965); *Cleveland Cliffs Iron Co. v. Corporation & Sec. Comm'n*, 351 Mich. 652, 88 N. W. 2d 564 (1958). Nor does the UDITPA apportionment formula, so applied, *per se* attribute income or values to a taxing state which is not rationally related to instate values, if intangibles are not included in the apportionment formula. *Adams Express, supra; Ford Motor Co., supra; Mobil, supra; National Leather Co., supra.*

UDITPA apportions "business income," based on a comparison of the instate activities of a trade or business to the total activities of the trade or business, by the well recognized three-factor apportionment formula (the average of the three factors of tangible property, payroll, and sales). "Business income" is defined in UDITPA § 1(a) as only that income produced by property and activities which are rationally related to the trade or business.[7] UDIPTA apportions all classes of income by the

[7]UDITPA § 1 (a) defines "business income as income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations (N. M. S. A. § 7-4-2 (A)).

three-factor formula on the fundamental premise that all income from property and activities which are rationally related to the trade or business is reasonably and constitutionally attributable to where that business is done as reflected by the location of the tangible property, payroll and sales (receipts) of that business.

Consistent with UDITPA §1(a), the Commission UDITPA advisory regulations,[8] which have been adopted or followed by most of the states, including New Mexico,[9] set forth general guidelines to determine when various classes of income are to be apportionable as "business income" or allocated as "nonbusiness" income.[10] These regulations provide that rents and royalties from real and tangible property, capital gains, interest, dividends and patent and copyright royalties are apportionable as business income in accordance with the same standard: Whether these classes of income derive from properties rationally related to the taxpayer's trade or business operations.[11]

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[8]7 Multistate Tax Comm'n Ann. Rep. app. J at 64-69 (1973-1974).

[9]N. M. Income Tax Reg. 17.

[10]UDITPA §§ 4 to 8 and N. M. S. A. §§ 7-4-5 to -9 provide for the specific allocation of rents and royalties from real or tangible property, capital gains, interest, dividends or patent or copyright royalties to the extent that they constitute nonbusiness income; that is when these items of income are not rationally related to the unitary business of the taxpayer.

[11]In general, these regulations provide:

> all transactions and activities of the taxpayer which are dependent upon or contribute to the operations of the taxpayer's economic enterprise as a whole constitute the taxpayer's trade or business and will be transactions and activity arising in the regular course of, and will constitute integral parts of, a trade or business. (7 Multistate Tax Comm'n Ann. Rep. app. J at 64).

Regarding the classification of dividends as business income, the Commission's UDITPA regulations state in part:

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Notwithstanding the fact that UDITPA only apportions income that is rationally related to a multi-jurisdictional unitary trade or business, Woolworth here argues that its apportionment provisions are unconstitutional because they "will 'inevitably' produce an arbitrary result," (Appellant's Br. at 41), and are "patently arbitrary," (*Id.* at 38),

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Dividends are business income where the stock with respect to which the dividends are received arises out of or was acquired in the regular course of the taxpayer's trade or business operations or where the purpose for acquiring and holding the stock is related to or incidental to such trade or business operations.

. . . .

Example (ii): The taxpayer is engaged in a multistate manufacturing and wholesaling business. In connection with that business the taxpayer maintains special accounts to cover such items as workmen's compensation claims, etc. A portion of the moneys in those accounts is invested in interest-bearing bonds. The remainder is invested in various common stocks listed on national stock exchanges. Both the interest income and any dividends are business income.

Example (iii): The taxpayer and several unrelated corporations own all of the stock of a corporation whose business operations consist solely of acquiring and processing materials for delivery to the corporate owners. The taxpayer acquired the stock in order to obtain a source of supply of materials used in its manufacturing business. The dividends are Lusiness income.

Example (iv): The taxpayer is engaged in a multistate heavy construction business. Much of its construction work is performed for agencies of the federal government and various state governments. Under state and federal laws applicable to contracts for these agencies, a contractor must have adequate bonding capacity, as measured by the ratio of its current assets (cash and marketable securities) to current liabilities. In order to maintain an adequate bonding capacity the taxpayer holds various stocks and interest-bearing securities. Both the interest income and any dividends received are business income.

Example (v): The taxpayer receives dividends from the stock of its subsidiary or affiliate which acts as the marketing agency for products manufactured by the taxpayer. The dividends are business income. (*Id.* at 68.)

when applied to apportionable income which includes income from stock investments.[12] However, the due process clause does not preclude the apportionment of intangible values or income which arise out of and are used in connection with a unitary business. In addition, nothing in the due process clause indicates that the apportionment of intangible values or income of a unitary business to where the business is done as reflected by tangible factors (tangible property, payroll, and sales) attributes extra-territorial values to the taxing state or is otherwise "patently arbitrary."

These twin principles were decided in 1897 in *Adams Express, supra.* They give constitutional recognition to the fact that intangible properties and values of a multi-state-multinational corporation, which arise out of and are connected with its unitary multi-jurisdictional business, are rationally related by tangible factors to where that business is being conducted. In *Adams Express, supra,* the Court upheld the apportionment of intangibles of a unitary business, which was conducted in numerous states, to where that business was done as reflected by the location of the tangible property of that business. The *Adams Express* court noted that a contrary contention "practically ignores the existence of intangible property, or at least denies its liability for taxation." 166 U. S. at 218.[13]

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[12]Presumably, this UDITPA standard, under Woolworth's reasoning, would also be unconstitutional as applied to other classes of income from intangibles such as income from patents, copyrights, bonds, and interest, etc. It so argues here in regard to exchange currency gains. Appellant's Br. at 40. ASARCO argues likewise in No. 80-2015 in regard to interest and gains from the installment sale of stocks.

[13]The substance of Woolworth's argument is that intangibles have no taxable value and produce no taxable income to the owner of the intangibles. Rather, Woolworth would at-

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The principles of *Adams Express* have been followed in all *ad valorem* property tax apportionment cases[14] as well as other state tax apportionment cases.

The foregoing principles were also recognized and applied by the Court in the "net worth" franchise tax cases of *Beauchamp, supra,* and *National Leather Co., supra. Beauchamp* upheld the apportionment of the entire "net worth" of Ford Motor Co. "calculated by the percentage of sales which are within the state," 308 U. S. at 335, although the "net worth" apportioned to the taxing state was many times greater than the value of the property located there. *National Leather Co.* (relied upon in *Beauchamp, supra,* 308 U. S. at 335-336) upheld a corporate privilege tax based on the fair cash value of stock, including the value of stock in subsidiary corporations, because the stocks were utilized by National Leather in the conduct of its business (the unitary business principle) even though the stock presumably had no taxable situs in the taxing state.

The development of state taxation of intangibles for state property tax purposes is analogous to the above "net worth" privilege and property tax cases. Intangibles for this purpose were held taxable on the basis of the "business situs" principle. Under this principle, a taxing state could tax intangibles which were associated with the taxpayer's business in the state. *State Tax Comm'n v. Ald-*

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tribute intangibles to the underlying tangible property and income-producing activities of the payors. This follows from Woolworth's argument that dividends are apportionable only when the business of the payors are unitary with the payee and, in that event, the dividends are, in substance, apportionable to the payors by the inclusion of their apportionment factors in the denominator of the payee's apportionment factors.

[14]*See, e. g., Norfolk & Western Ry. Co. v. Missouri State Tax Comm'n,* 390 U. S. 317 (1968); *Wallace v. Hines,* 253 U. S. 66 (1920); *Cleveland, Cincinnati, Chicago & St. Louis Ry. Co. v. Backus,* 154 U. S. 439 (1894).

rich, 316 U. S. 174 (1942); *Wheeling Steel Corp, supra; Liverpool Ins. Co., supra; First Bank Stock Corp., supra.* This principle was extended to permit intangibles to be sitused and taxed in full by any state that conferred any benefit related to their ownership. *Curry v. McCanless, supra.* Multiple state taxation of intangibles was thus possible under the due process clause since several states could confer some benefit in regard to an owner's interest in intangibles.[15]

To prevent multiple taxation of intangibles which are used in the conduct of a business both within and without the state, it is fair to apply the unitary business principle to apportion the intangibles to where the taxpayer conducts the business with which the intangibles are associated.[16] This is simply a logical application of the "busi-

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[15]See, Dexter, *Taxation of Income from Intangibles of Multistate-Multinational Corporations*, 29 Vand. L. Rev. 401 (1976).

[16]This simply recognizes the equities in the taxpayer's argument in *Wheeling Steel Corp., supra*, where the taxpayer argued that the intangibles in question (trade account receivable) should be apportioned because they were connected with business activities in more than one state. The *Wheeling* Court recognized the validity of this argument in the context of state net income taxes, although it held that the state where the intangibles had acquired a "business situs" could tax the full value of intangibles under the due process clause. 298 U. S. at 212.

Michigan decisions illustrate the reasonableness of apportioning dividends to avoid duplicate taxation. The Michigan Intangible Tax Act, which required apportionment of intangibles by a logical extension of the "business situs" principle, was before the Supreme Court of Michigan in *Cleveland-Cliffs Iron Co. v. Department of Revenue*, 329 Mich. 225, 45 N. W. 2d 46 (1950). The Michigan statute (quoted at 329 Mich. at 237-38) required intangibles to be apportioned by the three-factor formula of tangible property, payroll and sales if the intangibles were connected with a unitary business conducted within and without the state. Although the Court held that the intangibles there in question had no apportionable situs in

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ness situs" principle in a manner which conforms to the unitary business principle. Consistent with this, this Court has required the apportionment of movable tangible property which had a taxable *situs* in more than one state for *ad valorem* property tax purposes. *Standard Oil Co. v. Peck*, 342 U. S. 382, 384 (1952).

Although, apart from *Mobil, supra,* no decision of this Court has focused on the specific question of the apportionment of income from intangibles for state income tax purposes, the Court's net income apportionment cases have uniformly held that all of the net income of a unitary business conducted in more than one jurisdiction is properly apportioned by tangible apportionment factors to where the business is done in the absence of a showing by clear and cogent evidence that extra-territorial values are subject to tax. *Exxon, supra; Moorman, supra; Northwestern States Portland Cement Co., supra; Butler Bros., supra*; *Hans Rees' Sons, Inc., supra; Bass, Ratcliffe & Gretton, Ltd , supra; Underwood Typewriter Co., supra. Mobil* held likewise in regard to the apportionment of dividends.[17]

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Michigan because they were not found to be a part of the iron company's unitary business, no question was raised as to the reasonableness of apportioning intangibles to avoid double taxation. *Cf. E. F. MacDonald Co. v. Department of Treasury,* 62 Mich. App. 626, 233 N. W. 2d 678 (1975). See the well reasoned case of *Cleveland-Cliffs Iron Co. v. Corporation & Sec. Comm'n,* 351 Mich. 652, 88 N. W. 2d 564 (1968), where the court upheld a net worth franchise tax which used a three-factor formula to apportion the instate value of the privilege of doing business in the state, including the value of stock investments which were at issue.

[17]For a discussion of *Mobil,* see text at division V pages 25-29, infra. No basis exists to employ a different due process constitutional standard here. In fact, we know of no standard which is more reasonable or equitable, either to the taxpayer or the taxing jurisdictions.

The Commission and participating states strongly believe that the above analysis, which illustrates that UDITPA is constitutional, answers the due process question raised in the case at bar. Assuming, *arguendo,* that this analysis does not prevail, we will next respond to Woolworth's defective arguments.

II. The Due Process Clause Does Not Limit the Apportionability of Dividends or Other Income from Intangible Property, Including Dividends, to Income Received by a Payee from Payors Which Conduct Business Which is Related to the Business of the Payee Since Such Income Otherwise May Be Rationally Related to the Payee's Unitary Business.

Stocks, bonds, receivables, patents, copyrights, etc., acquire a taxable situs in the hands of the owner, apart from the underlying property activities or other considerations which give them value. *Curry v. McCanless, supra; Wheeling Steel Co. v. Fox, supra.* Furthermore, there is no due process reason to assign the income from such intangibles to the activities of the income payors any more than there would be to assign the income from the rental of tangible property to the activity of the payor of the rent. In each instance ownership and use of the property generates income to the owner. For UDITPA purposes, the controlling question is whether the property and the income produced by the property is related to and is used in connection with the taxpayer's own unitary business operations. This may be illustrated by the examples (ii) and (iv) in footnote 17, *supra,* and by the following example:

1. Assume Corp. A invests in stocks and bonds and notes receivable to provide for necessary liquidity in the conduct of its business and to generate supplemental income to meet fluctuating business needs. In this example, a rational relationship exists between these investments and Corp. A's

> business which supports the apportionability of the value of these investments and the income generated by them to where Corp. A's business is being conducted.

These examples illustrate that there can be a myriad of business purposes rationally related to or connected with a corporation's stock investments where the corporations in which the investments are made do not conduct any activity which is related to that of the investing corporation.

Furthermore, a corporation may invest in stocks, bonds, or miscellaneous obligations of other corporations for purposes rationally related to the business activities of the other corporations where the investing corporation is not conducting a unitary business with the other corporations. This can be illustrated by examples (iii) and (iv) in footnote 11, *supra,* and by the following example:

> Corp. C is a national retailer with retail establishments located in various shopping centers throughout the United States. In order to participate and be advised of the development of shopping centers, it invests in the stock of Corp. D whose business is developing shopping centers. Although no unitary business exists, Corp. C's investment is directly related to its business of retailing and Corp. D's development business.

Thus, Woolworth's construction of the due process clause is illogical and inconsistent with the unitary-business principle: Investments in stock can obviously be made for many purposes which are rationally related to the taxpayer's unitary business, without the taxpayer conducting a unitary business with the payor corporations.[18]

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[18]Woolworth recognizes this in reference to a dealer in securities and other "situations not considered in *Mobil* and not present here." (Appellant's Br. at 18-19). It would distinguish its situation from a securities dealer because "here, there is no evidence that the taxpayer's business consists of, or necessarily involves, security investments." *Id.* The logic of this argument and its factual assumption escapes us.

III. Woolworth's Arguments Are Based on the Untenable Premise that Dividends, for State Income Tax Apportionment Purposes, Can Never be Apportioned as the Income of the Recipient, since, to the Extent Dividends are Included in Apportionable Income, Woolworth Argues That They Must Be Attributable to the Underlying Profits and Activities of the Payor Corporations.

If this Court affirms Woolworth's position, in substance, it would be required to conclude that dividends are not the recipient's taxable income for apportionment purposes since, if apportionable, they must be attributable to the business activities of the payor corporations.[19]

Apart from its unsupportable interpretation of *Mobil* (which we consider, *infra* at pp. 25-29) Woolworth has cited no authority in support of its position, which must be based on the premise that the inclusion of dividends in apportionable income is the taxation of the profits of the dividend payor corporations.[20] This argument confuses the dividend income of the payee stockholders with the net taxable income of the payor corporations. It ignores the fact that the taxpayer whose earnings are being taxed is the payee who holds the stock investment in connection with its own unitary business. Inasmuch as stockholders and the corporations in which they own stock are distinct taxable legal entities, this argument has no constitutional

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[19]Woolworth is thus asking this Court, as a practical matter, to overrule *Mobil*. For, consistent with this argument, Mobil's dividends held apportionable in *Mobil*, should be attributable to the payors of the dividends.

[20]This is a novel and far-reaching construction of the due process clause and, if relevant in regard to the attribution of dividends, it is equally relevant in the attribution of other classes and sources of income from intangible property. Woolworth's position conflicts with this Court's holding in *Mobil* that Vermont was entitled to tax "a proportionate share of . . . dividend income." 445 U. S. at 446.

validity. See *Hawley v. Madden*, 232 U. S. 1 (1914); *Darnell v. Indiana*, 226 U. S. 390 (1912).[21]

The substance of this argument was rejected in *First Bank Stock Corp., supra*, and cases cited therein. *First Bank Stock Corp.* held that stock and other intangibles which are used in the business of the owner may acquire a taxable "business situs" where they are used in that business. 301 U. S. at 237. In applying the unitary business principle, the Court refused to distinguish the taxation of stock from the taxation of other intangibles and it refused to hold that stock has a taxable situs only at the location of the issuing corporation. *Accord, National Leather Co., supra*, where the Court rejected the taxpayer's argument that stock values should be attributable to the properties and activities of the issuing corporations. Furthermore, the decisions in both *Wisconsin v. J. C. Penney Co.*, 311 U. S. 435 (1940), and *Harvester Co. v. Department of Taxation*, 322 U. S. 435 (1944), assumed that the states in which the stockholders were located could constitutionally tax the dividends, irrespective of where the activities of the payor corporations were conducted. As noted in the dissent in *Harvester*, "[t]hese dividends, of course, are income to the stockholder, and any state with jurisdiction to tax him may tax them as such." 322 U. S. at 448.

Intangibles, including stock can acquire a taxable business situs even for property tax purposes. *Wheeling Steel, supra*. They may be apportioned on the basis of the busi-

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[21] In fact, this is arguing that dividends must be apportioned only as sustained by this Court in *Wisconsin v. J. C. Penney Co.*, 311 U. S. 435 (1940), and *Harvester Co. v. Department of Taxation*, 322 U. S. 435 (1944). In these cases, this Court upheld Wisconsin's power to apportion dividends as profits of the payor corporations which were attributable in part to their activities in the taxing state.

ness activities of the owner of the stock by a tangible property factor. *Adams Express*, 166 U. S. at 222.

Thus, Woolworth's due process apportionability argument is frivolous.

IV. Woolworth Has Not Established that, Under the Due Process Clause, It Is Entitled to Any Modification of the UDITPA Apportionment Formula if the Income from the Investments in Question are Included in Apportionable Income, Since It Has Failed to Sustain Its Contention that the UDITPA Apportionment Formula Attributed to New Mexico Any Net Income Which is not Rationally Related to its New Mexico Business Activities.[22]

Woolworth argues that if some portion of its income from the stock investments in question may constitutionally be included in the apportionable income, due process requires a modification of the UDIPTA apportionment formula (Appellant's Br. at 32-41). This argument is based on the proposition that the property, payroll and sales of the foreign subsidiaries from which the dividends are received generate this income (Appellant's Br. at 40), and not Woolworth's own activities, *Id.* at 36. As indicated in III above in this brief, this proposition ignores the fact that the taxation of dividends is not the taxation of the profits of the payor corporations. It also bases its apportionment relief argument on the assumption that its New Mexico tax liability is higher than if its subsidiaries were operated as divisions of Woolworth (Appellant's Br. at 32, 41). There is nothing in the record to support this. Nothing appears in the record to establish

[22]Woolworth characterizes its income from the stock investments in question as dividends, exchange gain and gross-up. While the inclusion of each one of these items in apportionable income may require some different analysis in terms of modification of the UDITPA apportionment formula, inasmuch as Woolworth has taken the position that they should all be treated as "dividends" from its foreign subsidiaries, we will do likewise in response to Woolworth's argument.

that its New Mexico tax liability would have been higher if its subsidiaries had been operated as divisions. Nor is this argument based on a factual showing that the UDITPA apportionment formula attributes extra-territorial income to New Mexico. Rather, Woolworth simply argues based on the foregoing untenable premises, that the apportionment result here in issue is "patently arbitrary" (Appellant's Br. at 38), an argument so lacking in merit that it was not raised in *Mobil*.[23]

The fact that Woolworth has not established by clear and cogent evidence that the UDITPA apportionment formula, as applied here, taxes extra-territorial values or income, is dispositive of its due process apportionment formula modification argument.[24] Nothing in *Mobil* changes one *iota* of burden imposed on Woolworth to establish by clear and cogent evidence that the UDITPA apportionment formula, as applied here, taxes extra-territorial income or values. The *Mobil* Court reaffirmed this burden of proof requirement when it noted that *Mobil* had

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[23]In our response to this argument, we are not suggesting that, on an appropriate factual showing, Woolworth might not have been entitled to appropriate apportionment relief. Here, however, Woolworth has made no such factual showing nor claim for apportionment relief. Rather, it relies solely on its contention that it is entitled, as a matter of due process, to some apportionment relief because the apportionment of the dividends in question under the UDITPA apportionment formula is "patently arbitrary" as a matter of law. (Appellant's Br. at 38.) While it bases its claim for apportionment relief by analogy to "combined reporting" results (the same results as if its subsidiaries were operated as divisions) it does not here seek to be permitted to file its New Mexico return in question by the "combined reporting" method (which apparently New Mexico would have permitted it to do under the circumstances of this case). Rather, it takes the positions (1) that a "combined report" would be unconstitutional and (2) it did not conduct a unitary business with the payor corporations for the year in question. (Appellant's Br. at 37.)

[24]*See, e. g., Exxon, supra; Moorman Mfg. Co., supra; Norfolk & Western Ry. Co., supra; Hans Rees' Sons, Inc., supra.*

not proved that its Vermont income tax liability was "out of all appropriate proportion to the business transacted by the appellant [Mobil] in that state [Vermont]." 445 U.S. at 437 (bracketed material added).

Assuming, arguendo, that the clear and cogent evidence standard is not applicable here, to determine the constitutionality of the UDITPA apportionment formula and that the "combined reporting" or "divisional operations" standard is, still, Woolworth has not established that it is entitled to any apportionment relief. As stated above, it has not shown that the UDITPA apportionment formula, as applied here, assigned any more taxable income to New Mexico than would have been the case if it had operated its subsidiaries as divisions or if it had filed on the basis of a "combined report" for the tax year in question. The facts are (1) that the tax consequences which follow from the apportionability of dividends have no direct relationship to the tax consequences of "combined reporting;" and (2) that neither of these methods have the same tax consequences which follow from inclusion of the payor's factors in the payees apportionment formula, as suggested by Woolworth, if dividends are included in apportionable income. This is amply demonstrated by the examples set forth in our *amicus curiae* brief at 18-22 in the tandem case of *ASARCO v. Idaho State Tax Comm'n,* No. 80-2015.[25] Those examples need not be repeated here. As those examples illustrate, the inclusion of dividends in apportionable income, without formula modification, may result in the attribution of less net taxable income to New Mex-

[25]A "combined report" result is comparable to the result of divisional operations. Combining Woolworth's subsidiaries and affiliates to determine Woolworth's income tax liability is the same as though those subsidiaries and affiliates had been operated as divisions. Therefore, the "combined reporting" examples in our *ASARCO* brief are equally applicable here.

ico than a "combined report." Furthermore, the inclusion of dividends in apportionable income, subject to the apportionment formula modification suggested by Woolworth, may be equivalent to the total exemption of dividends or may even reduce income apportionable to New Mexico below that which would be apportionable to New Mexico if dividends were exempt or completely eliminated from apportionable income.[26]

In further response to Woolworth's apportionment formula modification argument, it is significant to note the following: dividends are paid out of accumulated book earnings and profits and not current taxable net income. The corporation may pay substantial dividends out of accumulated book earnings and profits, or even current book income, and yet have no current taxable net income at all. Furthermore, accumulated earnings and profits are determined after the deduction of taxes on or measured by net income while net taxable income for state tax purposes is generally computed without the deduction of taxes on or measured by net income. Also, dividends are not necessarily paid from the profits of the business operations of the payor corporations. The accumulated earnings and profits of a dividend payor

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[26]Although not suggested by Woolworth in this case, nor by ASARCO in the tandem *ASARCO* case, No. 80-2015, it has been suggested that, if income from intangibles are apportionable, the formula should include the value of the stock in the denominator of the property factor (in both *ASARCO* and *Woolworth*, the income from the stock investments and other intangibles was included in the sales factor). Any such adjustment would be based on the erroneous conclusions that a part of the income should be assigned "nowhere" or that some state, such as the commercial domicile, has a greater claim to income of intangibles associated with a unitary business than the states where the business is conducted, including the commercial domicile, as reflected by the UDITPA apportionment factors. Furthermore, the difficulties with such an apportionment adjustment is comparable to the difficulties with the formula adjustment, suggested by ASARCO in No. 80-2015 and by Woolworth in this case.

corporation may derive from income from its own ownership of intangibles, including stock investments in its own subsidiary and affiliated corporations. In fact, dividends may be received from a corporation that conducts no business whatsoever (a holding company) which is affiliated with the taxpayer. A logical extension of Woolworth's argument could require the tracing of dividends through a myraid of second, third and even other tier corporations to find the true source of dividends for apportionment purposes. Such tracing might even reveal that the business operations which produced the dividends was that of the payor corporation itself.[27]

Thus, there is no factual validity to Woolworth's conclusion that the inclusion of the income from the stock investments in question in apportionable income is "patently arbitrary" on its face as compared to its potential New Mexico tax liability for the year in question if it had operated subsidiaries as divisions or had filed its New Mexico return by the "combined reporting" method. Nor is the argument valid as a matter of law. As applied in the instant case, the UDITPA apportionment formula simply assigns income rationally related to Woolworth's

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[27]For example, assume that M. I. M., whose dividends are involved in *ASARCO*, No. 80-2015, owns stock in ASARCO (which we understand it does). Some portions of M. I. M. dividends paid to ASARCO would then be traceable to ASARCO's own business operations. As a further example, assume that Corp. A developed a valuable patent as part of its research and development activities in the United States and then formed Subsidiary B in a tax haven country to which it transferred this patent. Assume further that Corp. A paid Subsidiary B for the use of the patent (deductible as a business expense) and then received dividends from Subsidiary B's patent income. In such circumstances, it is clear that the dividends are directly traceable to the business operations of Corp. A. (*See Dittler Bros., Inc. v. Commissioner*, 72 T. C. 896 (1979).)

unitary business to where that business is done as reflected by the location of the tangible property, payroll and receipts of that business. The inherent validity of a formula employing these factors was recognized in *Butler Bros., supra,* 315 U. S. at 509 and in *General Motors v. District of Columbia,* 380 U. S. 553, 561 (1965).

V. Mobil Reaffirmed and Followed the Unitary Business Principle, as Set Forth and Applied in the Previous Decisions of This Court, and Specifically Rejected the Argument that There was Something Constitutionally Different about the Apportionability of Dividends that Distinguished this Class of Income from Other Classes of Income.

As a due process decision, *Mobil* only decided whether there was something different about dividends from foreign affiliated corporations "that precludes, as a constitutional matter, state taxation of that income by the apportionment method." 445 U. S. at 435. *Mobil* decided that there was no such difference and that *Mobil* had failed to demonstrate why dividends from its foreign affiliates should be treated any differently than its operating income for apportionment purposes. 445 U. S. at 447-48. *Mobil* held that the dividends there in question were apportionable because Mobil failed to offer any proof "that would raise the question of nonapportionability." 445 U. S. at 422 (emphasis added.)[28]

When the *Mobil* Court concluded that the "linchpin of apportionability in the field of state income taxation

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[28]The *Mobil* Court found that Mobil failed to sustain this burden not only in regard to dividends from its subsidiaries, but also in regard to the dividends from its miscellaneous stock investments referred to in the *Mobil* dissent, 445 U. S. at 456 n. 16, and from its 10% investment in ARAMCO stock. These facts, conflict with Woolworth's argument that *Mobil*

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is the unitary-business principle," 445 U. S. at 439, and that this principle controls the apportionability of dividends, *Id.* at 449, it simply refused to apply a different due process standard to determine the apportionability of dividends or other income from intangibles than the due process standard applicable to all other classes of income. It specifically held that the unitary-business principle, as set forth in its prior decisions, was controlling as to the apportionment of all classes of income. *Id.* at 439. In no sense did it hold, contrary to settled law (*Darnell v. Indiana, supra; Hanley v. Madden, supra*) that income from stock must be attributable to the payor corporations for state income tax apportionment purposes.

Woolworth's argument to the contrary ignores (1) the issue before the Court in *Mobil;* (2) the decisions of this Court relied upon in *Mobil;* (3) the due process burden imposed upon Mobil to establish that its stock investments in *Mobil* were unrelated to its petroleum business, which it conducted in part in Vermont; (4) the express holding of the Court in *Mobil* that the linchpin of apportionability in the state income tax field is the unitary-business principle; and (5) the fact that Mobil obtained no apportionment or other relief in *Mobil.*

The foregoing analysis of the due process portion of *Mobil,* 445 U. S. at 430-42, is supported by the commerce clause portion of *Mobil,* 445 U. S. at 442-46.[29] While holding in *Mobil* that dividends were subject to apportionment under the commerce clause, the Court noted that

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(Continued from the previous page)

limited the apportionability of dividends to dividends from payor's corporations which had conducted a unitary business with Mobil.

[29]Inasmuch as due process and commerce clause issues are interrelated, *International Harvester Co. v. Department of Treasury,* 332 U. S. 340, 353 (1944), disposition of the commerce clause issue in *Mobil* is relevant for due process purposes.

when intangible property is related to more than one jurisdiction, apportionment of income from intangibles is the preferred method rather than specific allocation, 445 U. S. at 444-45, because

> the dividends reflect income from a unitary business, part of which is conducted in other States. In that situation, the income bears relation to benefits and privileges conferred by several States. (445 U. S. at 446).

It then concluded in *Mobil* that "[t]hese are the circumstances in which apportionment is ordinarily the accepted method." *Id.* The foregoing interpretation of Mobil is supported by *Exxon, supra,* the cases relied on in *Exxon* and *Mobil, supra,* and numerous state income tax cases which have applied the unitary-business principle in determining the apportionability of income from intangibles, all support the foregoing interpretation of *Mobil.*[30]

Also, the Commission's UDITPA regulations, adopted by New Mexico and relied on by the court below,[31] are consistent with the foregoing cases, including *Mobil.*

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[30]See, e. g., *Qualls v. Montgomery Ward & Co.,* 266 Ark. 207, 585 S. W. 2d 18 (1979); *Times Mirror Co. v. Franchise Tax Bd.,* 102 Cal. App. 3d 872, 162 Cal. Rptr. 630 (1980); *Lone Star Steel Co. v. Dolan,* No. 79CA0506 (Colo. App. Sept. 24, 1981), *cert. docketed,* No. 81 SC 382 (Colo. Sup. Ct. Dec. 4, 1981); *Xerox Corp. v. Comptroller of the Treasury,* 428 A. 2d 1208 (Md. 1981); *Albany Int'l Corp. v. Halperin,* — Me. —, 388 A. 2d 902 (1978); *W. R. Grace & Co. v. Commissioner of Revenue,* — Mass. —, 393 N. E. 2d 300 (1979); *Great Lakes Pipe Line Co., supra; Montgomery Ward & Co. v. Commissioner of Taxes,* 276 Minn. 479, 151 N. W. 2d 294 (1967); *Montana Dep't of Revenue v. American Smelting & Ref. Co.,* 173 Mont. 316, 567 P. 2d 901 (1977), *appeal dismissed,* 434 U. S. 1042 (1978); *F. W. Woolworth Co. v. Director of Division of Taxation,* 45 N. J. 466, 213 A. 2d 1 (1965); *Champion Int'l Corp. v. Bureau of Revenue,* 88 N. M. 411, 54 P. 2d 1300 (1975); *Sperry & Hutchinson Co. v. Department of Revenue,* 279 Or. 329, 527 P. 2d 729 (1974); *F. W. Woolworth Co. v. Commissioner of Taxes,* 130 Vt. 544, 298 A. 2d 839 (1972); *Gulf Oil Corp. v. Morrison,* 120 Vt. 324, 141 A. 2d 671 (1958).

[31]J. S. at 12a-13a; 7 Multistate Tax Comm'n Ann. Rept. app. J at 64-69 (1973-1974); see footnote 11, supra.

In arguing that the dividends in question are not apportionable under *Mobil,* Woolworth fails to note that the relationship of a payor's activities with that of a payee, which this Court considered in *Mobil,* is only relevant, for apportionability purposes, to determine whether the stock investments are rationally related in a due process sense to the payor's own unitary business. Woolworth admits this, in part, when it concedes

> There may be situations, not considered in *Mobil* and not present here, in which it would be appropriate to focus only on the taxpayer's own activities, without regard to the underlying activties of the company paying the dividends. (Appellant's Br. at 18-19).

Woolworth then sets forth an example of a securities dealer. *Id.* The only difference that we can discern between the securities dealers "situation" and other situations is the unitary business principle. Likewise, the only reason dividends are apportionable under UDITPA is because they are from stock investments which are rationally related to the taxpayer's regular trade or business operations. N. M. S. A. § 7-4-2 (A); UDITPA § 1 (a) (J. S. 12a-14a).

This UDITPA test as to apportionability conforms to the unitary business principle of *Mobil* which requires Woolworth to show "in order to establish that its dividend income is not subject to an apportioned tax . . . is that the income was earned in the course of activities unrelated to" its retailing activities and investments in New Mexico. 445 U. S. at 439. Woolworth has failed to make this showing. In the case at bar, since there is substantial evidence that the investments in question are in affiliated and subsidiary corporations whose activities are related to Woolworth's unitary business (J. A. at 19a-20a), like Mobil,

Woolworth has failed to establish a lack of due process connection between its stock in question and its unitary business. Thus, *Mobil* supports the apportionability of the dividends in question. Also, since Woolworth has not sustained the burden of proof affirmed in *Mobil*, it is entitled to no apportionment relief under *Mobil*.

VI. Woolworth's Commerce Clause Argument Lacks Merit Because It Is Based on An Erroneous Interpretation and Application of Japan Line Ltd. v. Los Angeles, 441 U. S. 434 (1979) and Erroneous Assumptions and Facts Not Supported by the Record.

On pages 25-28 of our *amicus* brief in the tandem case of *ASARCO v. Idaho State Tax Comm'n*, No. 80-2015, we have set forth the reasons why we believe ASARCO's commerce clause argument lacks merit. Since Woolworth's argument is identical to ASARCO's argument in No. 80-2015, we refer to our response in that case to support our position here that Woolworth's commerce clause argument lacks merit. As there indicated, one reason it lacks merit is because this court in *Mobil* held that *Japan Line Ltd., supra,* under facts comparable to those here, was not relevant.

CONCLUSION

For the reasons stated herein and in the tandem case of *ASARCO,* No. 80-2015, it is respectfully requested that this Court affirm the decision below of the Supreme Court of New Mexico.

Respectfully submitted,

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